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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/972,310

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Gary Thomas Axberg

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EXAMINER

CHOUDHURY, AZIZUL Q

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/972,310

Applicant(s)

AXBERG ET AL.

Examiner

Azizul Choudhury

Art Unit

2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JASON CARDONE
SUPERVISORY PATENT EXAMINER

AC

Continuation of 11. does NOT place the application in condition for allowance because: The after-final amendment received on July 17, 2006 has been considered but is not deemed fully persuasive. The claim amendments will be entered since they do not introduce any new matter and only help to clarify the claim language. The following are the examiner's response to the arguments presented in the after-final amendment. The first point of contention involves the use of official notice within the last office action. Applicant traverses the official notice taken by the examiner. The Crockett prior art teaches copying data from one host to another host for the sake of providing disaster recovery. Crockett teaches that data recovery is suitable for disaster recovery (col. 2, line 63 - col. 3, line 39, Crockett). Hence, the data that is copied from one host to another can be system critical. In other words, the data copied can be data critical to the operation of a system, such as a network (the design itself is networked, such as topology information. Hence, official notice was taken that topology information is one such data that can be copied from one host to another within Crockett's design. Applicant then argues a second point of contention whereby he states that the examiner has not cited any part of Crockett as teaching that the second component accesses the first representation and dermines a discrepancy between an event notification indicative of a topology change and then selectively disregard the event notification or recover the second representation. Within the last office action, the examiner stated that the two hosts are updated against one another (so differences between data within each host is searched for) (col. 2, lines 58-62, Crockett). In addition, the examiner stated that means for detection of errors (events) are present and are capable of triggering synchronization between the primary and secondary hosts (col. 7, lines 34-44, Crockett). If copying of data is needed, then copying is performed (disaster recovery). In the third point of contention, the applicant argues that the error detection taught by Crockett is not equivalent to the claimed topology discrepancy detection and notification. The examiner disagrees with this assertion. Crockett's design allows for data to be copied from one host to another host if a discrepancy is detected. Scans for discrepancy detection are performed when the hosts are updated against one another (col. 2, lines 58-62, Crockett). When data is synchronized (data between the two hosts are checked and writes (copies) are performed as needed for backup purposes) discrepancies are searched for (column 7, lines 21-56, Crockett). When an error is detected, a notification occurs since error recovery occurs (to correct the data) due to the detection. Another point of contention involves the applicant's assertion that the official notice is not appropriate since the examiner has not shown why providing synchronizing multiple representations of topology information on multiple components is common knowledge. The last office action clearly states: "Official notice is hereby taken for it would have been obvious to one skilled in the art, to have the disaster recovery information of Crockett's design be topology information since, topology information is a form of disaster recovery information." The applicant requested prior be cited to support the synchronization of topology information on multiple components. The examiner hereby cites US Patent No. 5,671,357 (Humblet et al). Humblet teaches that topology information can be synchronized between the databases within each network device. In the next point of contention, the applicant argues that claim 2 feature of agents is not taught. In the last office action, the examiner stated that since data is checked at both hosts, agents/daemons must inherently be present within both hosts. The applicant continues arguing that the examiner has not cited within the Crockett art where such a feature is taught. However, the applicant is reminded that a trait is inherent when it is known in the art that the design cannot function without such a trait. No citation to the Crockett art is required. Another point of contention argued by the applicant involves claim 7. The applicant argues that at least one of the functions claimed is not taught by the Crockett prior art. The examiner disagrees with such an assertion. The Crockett prior art teaches synchronizing data from one host to another host for the sake of providing disaster recovery. The data synchronization allows for the data contained within each host to be equivalent. If a discrepancy is detected, correct data is copied from one host and written over the data of the other host, thereby adding or deleting incorrect information. This explanation was provided in the office action and this trait is equivalent to the claimed trait of "ii) comparig the first and second representations in whole or in part, and copying from the first representation to the second representation attributes missing from the latter, while any of deleting or marking as missing attributes in the second representation indicative of components present in the scndnd representation but not in the first representation..." The applicant then argues that claim 8 teaches disregarding an event notification on a topology change. Crockett teaches equivalent traits in column 16, lines 3-18. With regards to claim 9, the applicant contends that Crockett does not teach "determining the discrepancy and selectively recovering the second representation in response to any of the listed four occurences." The Crockett prior art teaches synchronizing data from one host to another host for the sake of providing disaster recovery. The data synchronization allows for the data contained within each host to be equivalent. If a discrepancy is detected, correct data is copied from one host and written over the data of the other host, thereby adding or deleting incorrect information. This feature within Crockett is deemed equivalent to the claimed traits of claim 9. The applicant then contends that Crockett does not teach the claim 11 trait of "recovery operations." As noted above, Crockett's design synchronizes host devices to ensure back-up data is available, should disaster recovery be needed. If disaster recovery is needed, data from one host is copied to another. This is equivalent to the claim 11 trait of "recovery operations." Finally, the applicant contends that claims 12-23 teach the trait of "determining the discrepancy." Crockett teaches such a trait. Within the last office action, the examiner stated that the two hosts are updated against one another (so differences between data within each host is searched for) (col. 2, lines 58-62, Crockett). In addition, the examiner stated that means for detection of errors (events) are present and are capable of triggering synchronization between the primary and secondary hosts (col. 7, lines 34-44, Crockett). If copying of data is needed, then copying is performed (disaster recovery).